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Day v. American Seafoods Co. LLC 557 F.3d 1056 (Decided March 2, 2009)

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**THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AFFIRMS A
RULING EXCLUDING EXTRINSIC EVIDENCE REGARDING A CONTRACT FOR A
SINGLE FISHING VOYAGE.**

The United States Court of Appeals for the Ninth Circuit affirmed the United States District Court for the Western District of Washington’s ruling that barred “extrinsic evidence pertaining to the duration” of an unambiguous employment agreement. The Court held that the exclusion of extrinsic evidence was not an abuse of discretion and that a contract for one fishing voyage was not per se unconscionable.

Day v. American Seafoods Co. LLC
557 F.3d 1056
(Decided March 2, 2009)

Jackie Day (“Day”), executor of the estate of Jesse O’Neal, Jr. (“O’Neal”), appealed an order of the District Court barring extrinsic evidence regarding the length of the decedent’s employment agreement with defendant American Seafoods Company, LLC (“ASC”). O’Neal signed a work contract with ASC for one fishing voyage which contained an integration clause. O’Neal received injuries to his neck and back on the voyage described in the contract, and subsequently ended his employment with ASC. ASC then paid O’Neal wages to the end of the voyage. O’Neal chose not to sign an agreement with ASC for another voyage. Day then sought “unearned wages” for a period greater than the voyage agreed upon in the written contract, maintaining that extrinsic and parole evidence would show an agreement for a period longer than stated in the contract. The District Court did not admit parol evidence on the issue and the Court of Appeals reviewed that court’s application of the parol evidence rule.¹

On appeal, the court examined whether parol evidence should have been admissible to determine the actual agreed-upon duration of employment and amount of “unearned wages” deserved. As a basic matter, the general rule of maintenance and cure is that “it is the shipowner’s obligation to pay a seaman who falls ill or injured while in the service of the vessel, full wages throughout the period of employment”.² According to the court in *Lipscomb v. Foss Maritime Co.*, maintenance and cure entitles an injured seaman to “‘unearned wages’ from the onset of injury or illness until the end of the voyage”.³ In addition, under federal law shipowners and their employees are required to enter into a written agreement “that state[s] the period of effectiveness of the agreement”.⁴

Both parties had signed a written agreement which stated that the term of the contract period was for one trip and that “trip” was defined as “one fishing voyage, from the time the seaman reports to the vessel to the time the catch is unloaded”.⁵ O’Neal also signed an integration clause which stated that the agreement was the “final commitment of the parties” and that modification was ineffective unless “agreed upon in writing, signed by the party against whom enforcement was sought”.⁶ It was on the basis of this clause, and the federal parol evidence rule, that the District Court held that extrinsic evidence was inadmissible.⁷

While the doctrine of maintenance and cure requires that the seaman be paid unearned wages in the event of injury, 46 U.S.C. § 10601 limits that recovery to the “durational language” specified in the

¹ *Miller v. Fairchild Indus. Inc.*, 885 F.2d 498, 503 (9th Cir.1989).

² *Berg v. Fourth Shipmore Associates*, 82 F.3d 307, 309 (9th Cir. 1996) (quoting *Vitco v. Joncich*, 130 F.Supp. 945, 949 (S.D.Cal.1955)).

³ 83 F.3d 1106, 1109 (9th Cir. 1996).

⁴ 46 U.S.C. § 10601(b)(1) (2000).

⁵ *Day v. American Seafoods Co. LLC*, 557 F.3d 1056, 1058 (9th Cir. 2009).

⁶ *Id.* at 1058.

⁷ *United States v. Triple A Mach. Shop, Inc.*, 857 F.2d 579, 585 (9th Cir.1988).

contract.⁸ Day argued that this conclusion was wrong and that the express contract language should have limited only earned wages and not unearned wages. However, the court found that Day offered no support nor cited any authority that unearned wages had ever been granted for a period longer than the one specified in an unambiguous contract. Day instead cited two cases that he argued attacked the court's application of the parol evidence rule. The court found that the primary case, *Benny v. Blue North Fisheries*, dealt with an ambiguous term unlike the current case.⁹ In regard to the second case, *Gillis v. Seldovia Fisheries, Inc.*, the court held it lacked context.¹⁰ The Court of Appeals rejected the contention that an unambiguous term could be removed because of extrinsic evidence.

Day additionally argued that in regard to unearned wages, employment contracts for one fishing voyage were per se unconscionable. However, the Court of Appeals cited *Vitco* in holding that at most an employer may not contractually abrogate its duties to pay unearned wages for the duration of the agreement, not that there is an obligation to pay unearned wages beyond that duration.¹¹

As such, the Court of Appeals affirmed the holding of the District Court.

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⁸ *Miller v. Arctic Alaska Fisheries Corp.*, 944 P.2d 1005, 1013 (1997)

⁹ No. C04-0672L (W.D.Wash. Jan. 3, 2005).

¹⁰ No. C04-1503C (W.D.Wash. Mar.29, 2005).

¹¹ *Vitco*, 130 F.Supp. at 951.